

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

DWAYNE L. RIECO	:	Case No. 4:12-cv-02032
	:	
Plaintiff	:	(Judge Brann)
	:	
v.	:	
	:	
WILLIAM HEBE, <u>et al.</u> ,	:	
	:	
Defendants.	:	

ORDER

March 12, 2014

On October 2, 2013, Chief Magistrate Judge Martin C. Carlson issued a Report and Recommendation (ECF No. 28) (hereinafter, the “R&R”) in which he advised the Court to grant the motion for summary judgment of defendants Jenny Farrer and Michele Rigalbuto, and to dismiss the claims against defendant William Hebe for plaintiff’s failure to state a claim. Plaintiff Dwayne L. Rieco did not file objections, so the Court has reviewed the R&R for clear error and conformity with well-established law. See Henderson v. Carlson, 812 F.2d 874, 878 (3d Cir. 1987) (although Court is not required to review magistrate judge’s report absent objections, “the better practice is for the district judge to afford some level of review to dispositive legal issues raised by the report”). The Court will adopt the

R&R with the following modifications.

The R&R reaches the erroneous conclusion that “[a]t the outset, the Rooker-Feldman doctrine applies here and bars further consideration of this matter.” (R&R at 9). To the contrary, it seems relatively clear to this Court that the Rooker-Feldman doctrine applies, if at all, only to the strand of Rieco’s claim challenging defendants’ filing of a Petition to Terminate Parental Rights against him. See Ernst v. Child & Youth Serv. Of Chester Cnty., 108 F.3d 486, 491-92 (3d Cir. 1997).

The R&R also reaches an erroneous conclusion when it holds that the allegations against defendant Hebe should be dismissed because Hebe is not alleged to be a state actor. Rather, it seems relatively clear that Hebe was functioning as a state actor, but that he is entitled to absolute immunity. See Ernst, 108 F.3d at 500-504.

Those issues aside, the Court agrees that the moving defendants are entitled to summary judgment on qualified immunity grounds under the circumstances.

NOW, THEREFORE, IT IS HEREBY ORDERED:

The October 2, 2013 Report and Recommendation (ECF No. 28) is ADOPTED WITH MODIFICATIONS; the motion for summary judgment of defendants Jenny Farrer and Michele Rigalbuto (June 7, 2013, ECF No. 19) is

GRANTED; the claims against defendant Hebe are DISMISSED; and the case is REMANDED to Chief Magistrate Judge Carlson.

BY THE COURT:

s/ Matthew W. Brann
Matthew W. Brann
United States District Judge